

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

MARIA FLORES,

Plaintiff,

v.

WAL-MART INC. D/B/A  
WAL-MART SUPERCENTER,

Defendant.

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Cause No.: \_\_\_\_\_

**WAL-MART INC. D/B/A WAL-MART SUPERCENTER'S NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

**COMES NOW**, WAL-MART INC. D/B/A WAL-MART SUPERCENTER (“Walmart”) and files it’s Notice of Removal pursuant to 28 U.S.C. § 1441 based on diversity of citizenship jurisdiction, and in support of the same, would respectfully show the Court as follows:

**I.  
FACTUAL BACKGROUND**

1. This lawsuit was originally filed on November 23, 2020 under Cause No. 2020DCV3785, and styled *Maria Flores v. Wal-Mart Inc. d/b/a Wal-Mart Supercenter*, in the 327th District Court of El Paso County, Texas (hereinafter the “State Court Action”).

2. A true and correct copy of the docket sheet from the State Court Action is attached to this Notice as “Exhibit A.” Pursuant to 28 U.S.C § 1446(a) a true and correct copy of all process, pleadings and orders in the State Court Action are being attached to this Notice as “Exhibit B.”

3. Plaintiff asserts a Texas state law claim for premises liability, alleging that while exiting Walmart’s premises, she “fell on a wire or extension cord that was lying on the floor.” *See* Ex. B, Pl.’s Orig. Pet. at ¶ 8.

4. Plaintiff seeks damages for past and future: medical care/expenses, physical pain, mental anguish, disfigurement, physical impairment, and lost earning capacity in amount “of more than \$200,000, but not over \$1,000,000.00” *Id.* at ¶ 6.

## II. BASIS FOR REMOVAL

5. This case is being removed based on diversity of citizenship jurisdiction under 28 U.S.C. § 1332 and pursuant to 28 U.S.C. § 1441(a). Any civil action brought in a State court of which the district courts of the United States have original jurisdiction may be removed by the defendants to the district court of the United States for the district and division embracing the place where such action is pending. 28 U.S.C. § 1441(a). The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of a State and citizens or subjects of a foreign state. 28 U.S.C. § 1332(a)(2).

6. Plaintiff was a Texas citizen at the time that she filed this lawsuit and is currently a Texas Citizen. *See* Ex. G-H. Plaintiff has lived at 256 Clemson Lane, El Paso, Texas 79928 since 2007. *Id.*

7. On the contrary, Defendant Walmart, Inc. d/b/a Wal-Mart Supercenter is not a Texas citizen. That is, Walmart, Inc. is the new name of Wal-Mart Stores, Inc., a corporation formed under the laws of the State of Delaware with its principal place of business in Arkansas. *See* Ex. C, Texas Secretary of State Form 406, filed on Dec. 15, 2017 (indicating that Walmart Inc. is Wal-Mart Stores, Inc.’s new name); *see also* Ex. D, Affidavit of Geoffrey W. Edwards.

8. Thus, Plaintiff and Walmart are completely diverse.

9. Further, Plaintiff seeks “over \$200,000” in damages, an amount over the \$75,000.00 threshold under 28 U.S.C. § 1332(a). *See* Ex. B, Pl.’s Orig. Pet. at ¶ 6. Accordingly, the amount in controversy requirement of 28 U.S.C. 1332(a) is also satisfied.

10. Therefore, because Plaintiff and Walmart are completely diverse, and because Plaintiff seeks damages in an amount over \$75,000.00, this Honorable Court has jurisdiction over Plaintiff’s claim.

### **III. PROCEDURE**

11. If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable. 28 U.S.C. § 1446(b)(3). A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than one year after the commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action. *Id.*

12. Plaintiff filed the State Court Action on November 23, 2020. Ex. B, Pl.’s Orig. Pet. Defendant was served on December 4, 2020. *See* Ex. B, CT Corporation Service Document.

13. Walmart served Plaintiff with Requests for Admission and Interrogatories for the sole purpose of ascertaining Plaintiff’s citizenship on December 10, 2020. *See* Ex. E-F. Plaintiff served her answers/responses to Defendant’s discovery requests on January 11, 2021. *See* Ex. G-H. It was on this date that for, the first time, it was ascertainable that Plaintiff was a citizen of Texas. *Id.* Accordingly, because less than thirty (30) days have elapsed since this date, Walmart’s Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b)(3).

14. Venue of this removed action is proper in this Honorable Court pursuant to 28 U.S.C. § 1441(a) as El Paso is the District and Division where the State Court Action is pending.

15. Pursuant to 28. U.S.C. § 1446(d), Defendant will promptly give all parties written notification of the filing of this Notice, and will also promptly file a copy with the District Clerk of El Paso County, Texas where the State Court Action is currently pending.

**IV.  
JURY DEMAND**

16. Walmart asked for a state court jury trial and asks for a jury trial in this Court.

**WHEREFORE, PREMISES CONSIDERED,** Walmart prays that this matter be placed on the Court's docket and for any other and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

**MOUNCE, GREEN, MYERS,  
SAFI, PAXSON & GALATZAN**

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Supercenter

**CERTIFICATE OF SERVICE**

In compliance with the Federal Rules of Civil Procedure, I certify that on the 2 day of February, 2021, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following: Magaly Grimaldo, [mgrimaldo@theleonlawfirm.com](mailto:mgrimaldo@theleonlawfirm.com), Carlos A. Leon, [cleon@theleonlawfirm.com](mailto:cleon@theleonlawfirm.com), and Piero Garcia, [pgarcia@theleonlawfirm.com](mailto:pgarcia@theleonlawfirm.com), The Leon Law Firm, PC, One Sugar Creek Center Blvd., Suite 980, Sugar Land, Texas 77478.

  
**Cal Mundell**